

**ZONING BOARD OF APPEALS
NEW BEDFORD CITY HALL - 3rd Floor
WILLIAM STREET
NEW BEDFORD, MA
Thursday, March 16, 2017**

PRESENT: Debra Trahan (*Chairperson*)
Allen Decker (*Clerk*)
Leo Schick
Sherry McTigue
John Walsh

ABSENT: Bob Schilling

STAFF: Dan Romanowicz, Commissioner Inspectional Services
Jennifer Gonet, *Assistant Project Manager*

1. CALL TO ORDER

Chairperson Trahan called the meeting of the City of New Bedford Zoning Board to order at 6:10 p.m..
Clerk Decker explained the process and protocols to those in attendance.

2. OLD BUSINESS

ITEM 1: Cases #4266/4267-

#4266 -Petition of Brian Andrade, Trustee of Broadway Laundry Realty Trust (173 Rear Broadway Taunton, MA 02780) and Signs by Tomorrow (65 Belmont Street South Easton, MA 02375) for a Variance under Chapter 9 Comprehensive Zoning sections 3200 (sign regulations), 3201 (Purpose), 3210 (general regulations), 3254 (ground signs), 3255 (area restrictions), 3256 (location restrictions); relative to property located at 80 Summer Street, assessor's map 58 lot 414 in a mixed use business zoned district [MUB]. The petitioner proposes to change the face design and add a digital display to an existing ground sign as plans filed.

#4267 Notice is given of a public hearing on the petition of: Brian Andrade, Trustee of Broadway Laundry Realty Trust (173 Rear Broadway Taunton, MA 02780) and Signs by Tomorrow (65 Belmont Street South Easton, MA 02375) for an Administrative Appeal under Chapter 9 Comprehensive Zoning sections 5223 (administrative appeal for Prohibited signs), 3210 (general regulations), 3220 (prohibited signs), and 3222;relative to property located at 80 Summer Street, assessor's map 58 lot 414 in a mixed use business zoned district [MUB]. The petitioner proposes to change the face design and add a digital display to an existing ground sign as plans filed.

A motion was made (AD) and seconded (LS) to re-open the above cases.
Motion passed unopposed.

Clerk Decker, upon notation from Mr. Walsh, stated that Case #4267 is an administrative appeal, for which he had no prepared explanation to read to the public. He believed the applicant of an administrative appeal needs four affirmative votes in order to prevail.

Jim Halleck, Signs By Tomorrow, representing the Laundromat Holding Company. He stated they are looking to install a pylon sign outside the building, including a digital display unit. He inquired as to whether he needed to reiterate all the details gone through at the prior meeting, but stated his understanding was that the board had questions they wanted the owner present to answer.

The board declined to have the variance package presentation repeated.

Mr. Halleck reiterated that they believed they had met the burden for their reasons for having the sign and digital display. He stated that the future sign would be so much nicer than what was present, and he believed the board should take that into consideration.

Brian Andrade, Lordan Road, Raynham, invited questions from the board.

Chairperson Trahan noted that some information on opening days and hours had been provided. Chairperson Trahan noted that within the petition it mentioned a doubling of employees, which left the board wondering about the sufficiency of the parking.

Mr. Andrade stated there are presently three employees who, for the most part, are part-time workers. He stated they are presently open from 7:00 a.m. to 9:00 p.m.. He stated with the display they expect to advertise and get more drop off service, as opposed to walk-in service. He stated they believe the sign will attract dry cleaning and drop-off service.

In response to Board Member Schick, Mr. Andrade stated the sign operation hours would be 7:00 a.m. to as late as possible. Mr. Halleck stated the sign display will be programmed to turn on and off per city by-laws, which he stated is typically no earlier than 6:00 a.m. and has to be off by either 10:00 or 11:00 p.m..

Board Member. Schick inquired as to whether the digital display would be multi-color or single color. Mr. Halleck stated the display proposed is a multicolor, but can be made monochrome.

Board Member Schick inquired as to an output/lumen rating. Mr. Halleck stated he did not have the maximum lumens the sign can generate with him. Mr. Schick stated there had been a sign in the city that was so bright it was blinding to on-coming traffic. Mr. Halleck stated today's digital displays have sensors that will automatically turn down the brightness as it gets darker.

In response to Board Member Schick, Mr. Halleck stated the sign is capable of animation and flashing, but most business owners find it makes no sense to change the message more than every seven minutes.

Board Member Schick noted a neighboring residence and he is concerned for the intensity of the sign disturbing them.

In response to an inquiry by Board Member McTigue, Chairperson Trahan noted that owners had been notified of this matter, which does not mean that the residences' occupants had.

There was board discussion about conditioning that the sign change no more than every seven minutes.

Chairperson Trahan stated the application states there are now five employees and the applicant expects to have ten. Mr. Andrade stated he presently has three employees. In response to Chairperson Trahan, Mr. Andrade stated there are thirteen parking spaces.

In response to Board Member McTigue, Mr. Andrade stated they have not touched the present sign. Board Member McTigue stated her biggest concern was the closeness to the sidewalk and the height as a safety issue. She stated the zoning officer would determine if the height was satisfactory.

Mr. Halleck stated that with the digital display they will be at a lower height, but with the new sign and digital display they will be farther away from the sidewalk than the current sign, and the new sign would not be over the sidewalk area.

Board Member McTigue inquired as to installation of some protection to the base, such as rocks. Mr. Halleck stated there is presently a steel pole in a footing with an aluminum shroud around it which is destroyed. Board Member McTigue re-iterated her desire to see some protection, and her concern about the safety of people walking under this 6' sign.

Mr. Halleck stated the current sign is 8'.

Board Member McTigue stated that her thought was to protect the base so the pedestrians could not walk under the sign. Mr. Andrade stated they could add bollards to the corner of the sign. Board Member McTigue also noted it could be a target for vandalism.

Mr. Andrade noted all the work he had done on the building, and referred the board to the proposed plan, containing a before and after.

Mr. Walsh noted that the sign and digital display would be 6' when it should be 8' under the ordinance.

Mr. Halleck stated the applicant is more than happy to put any necessary barrier. In response to Board Member Schick, Mr. Halleck stated the reason for the sign being 6' is so that they could use the existing steel pole. He stated that raising the signs could require a new pole, which would be a huge cost burden to the applicant.

Board Member McTigue suggested the possibility of putting the digital sign on the building.

Mr. Romanowicz stated the applicant is seeking appeal because the digital display is prohibited. He stated the applicant seeks the variance to cover the sign regulations, general regulations, ground sign, area restrictions and distance restrictions. He read the related ordinance for the board.

Mr. Walsh suggested that the board first vote on the appeal, as that will determine whether the board can move onto the variance. He stated his understanding of the appeal is that Mr. Romanowicz has made a decision that the digital display is in violation of Chapter 9, Section 3230. Mr. Walsh added that he too believed it to be in violation. He stated he believed the board's job was to decide whether Mr.

Romanowicz was in error and had misinterpreted the ordinance. He stated he felt the board had no leeway regarding the regulation; which either prohibits the proposed sign or it does not.

Chairperson Trahan inquired whether Mr. Andrade would still change the sign if the board denied the digital sign. Mr. Andrade stated he had to change the sign due to the wrong name being on the present sign. Mr. Halleck noted that other businesses have a digital sign.

Chairperson Trahan stated that each application is individual and in this case the location is heavily residential, and she is concerned that the residents did not receive notice of this matter and had no chance to appear and voice their concerns. She invited any alternative from the applicant.

Mr. Halleck disagreed that the sign would be flashing and would be a detriment to the folks sleeping. He stated if the only concerns for the board are the flashing and brightness of the sign, the applicant will gladly re-propose or stipulate that. He stated the board could deem those things as part of the acceptance.

Mr. Andrade welcomed any stipulation from the board. He stated that at that point he would decide if he would proceed with the digital sign.

There was no response to Chairperson Trahan's invitation to speak or be recorded in opposition, noting there was also none at the prior meeting on this matter.

Chairperson Trahan declared the hearing closed.
She noted the discussion and vote would be on Case #4267.

Mr. Walsh reiterated that the appeal is on whether or not Mr. Romanowicz's decision that the digital sign is in violation of Chapter 9, 3220 is valid or invalid.

Ms. McTigue noted that all cases before the board go against someone or the code in general. It's not that Danny's right or wrong. It's in this case do we think it's okay or it's not.

Board Member Schick expressed he would at least want a condition on the digital display.

Mr. Walsh repeated his position that he will be looking at whether the digital display is a violation of the four corners of the statute, and Chapter 9, 3220 stating these signs are prohibited. He stated he did not believe the board could re-write the regulations, as this is not a request for variance.

Board Member Decker believed Mr. Walsh's comments to be on point, and stated he was inclined to vote against it.

Ms. McTigue noted she had seen such signs, but not near residents, and they are on the building or in a large parking plaza.

After further board discussion on content, a motion was made (AD) and seconded (JW) in Case #4267, concerning property located at 80-82 Summer Street, assessor's map 58 lot 414 in a mixed use business

zoned district [MUB], to approve an administrative appeal as follows: To allow the petitioner to change the face design and add a digital display to an existing ground sign as per the plans filed per the administrative appeal process under Chapter 9 Comprehensive Zoning Section 5223, 3210, 3220 and 3222 relative to property located at 80-82 Summer Street, assessor's map 58 lot 414 in a mixed use business zoned district [MUB]. Having reviewed this petition in light of the City of New Bedford Code of Ordinance Chapter 9, section as cited, and under the provisions of MGL Chapter 40a Sections 7, 8 and 14, the board finds the following facts:

- That as proposed, the digital element of the sign will be capable of animation intermittence movement and flash as concerns said lighting
- That the zoning enforcement officer has determined this element violates Section 3222 of the City of New Bedford Zoning Ordinance
- That the petitioner is asking for an appeal of the said finding of violation by the zoning enforcement officer

Roll-call vote as follows:

Chairperson Trahan – No

Board Member McTigue – No

Clerk Decker– No

Board Member Schick - No

Board Member Walsh - No

Motion failed – 5-0

After board discussion and consultation with Mr. Romanowicz, there was a concern that as advertised, the petition's request for variance in Case # 4266 could not be voted upon as it too includes the digital sign. Mr. Walsh noted that the board could carve out the digital sign component as a condition.

Mr. Andrade noted that he can replace the existing sign. The variance was for a digital display underneath, and as such he does not believe he needs a variance any longer. Mr. Andrade stated he is only putting a new face on the existing sign, making it a round circle instead of a rectangle.

Mr. Andrade withdrew his request for variance without prejudice.

A motion was made (AD) and seconded (JW) in regard to Case # 4266 to allow the petitioner to withdraw his request for variance without prejudice.

Motion passed unopposed.

PUBLIC HEARINGS:

ITEM 1 - Case #4268 – Petition of: 899 Pleasant Street, LLC (34 Hillman Street New Bedford, MA 02740) and Architectural Consulting Group, Inc. c/o Michael W. Josefek (2206 Acushnet Avenue New Bedford, MA 02745) for a Special Permit under Chapter 9 Comprehensive Zoning sections 2200 (use regulations), 2210 (general), 2230 (tables of use regulations-appendix A, #20 Medical Office, Center, or

Clinic), and 5300-5390 (Special Permit); relative to property located at 899 Pleasant Street, Assessor's Map 58, Lot 300302, 304, 499 in a Mixed Use Business [MUB] zoned district. The petitioner proposes to erect a dental office as plans filed.

Board Member Decker disclosed that the petitioner is his dentist. He stated he did not believe this would impact his impartiality. Board Member Decker stated he was happy to recuse himself, and noted that in his absence the petitioner would need four affirmative votes.

Mike Josefek, Architectural Consulting Group, after consulting with Mofta El-ghadi, he stated it was acceptable to go forward with Board Member Decker present.

In regard to Case #4268, a motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 2/24/17 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner, dated 3/16/17; the appeal package as submitted; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

Chairperson Trahan declared the hearing open.

Mike Josefek displayed for the board the current site, which has an 1860 structure on it with a garage that may have formerly been a barn. He noted a large parcel of land and a parking area behind the structure where a house was apparently torn down in the past creating a parking lot. He drew the board's attention to the assessor's map, noting the property is comprised of five separate lots to be combined into two lots. Mr. Josefek stated they had met with representatives from various city departments, and originally all the old buildings were to be taken down. He stated that after discussion with Historic and Building and Planning, it was agreed to try and save the building in spite of the additional cost. He stated they had the engineer do a Form A, not yet submitted, where the barn will be moved to the other lot, saving the historic structure to be made into an office. Mr. Josefek noted in its current state it does nothing positive for the neighborhood. He stated the proposal is to put an addition sympathetic to the historic nature of the current structure.

Mr. Josefek displayed and discussed the floor plan cutaway showing existing conditions, adding that they will maintain the original fabric as much as possible and restore it. He stated all materials used will be historically appropriate. He stated plans will include removing the tin siding, installing new windows, and maintaining the trim, keeping the historic aspect of the current structure.

Mr. Josefek stated that having worked on many historic restoration projects with the city, what will be built alongside will not replicate the current structure, so that the new addition will look somewhat the same, but will have visible nuances which still fits the character and the neighborhood. He felt this would bring new life to the corner and eliminate current foot traffic and the empty parking lot.

Mr. Josefek stated the doctor has had his current operation in cramped quarters down the hill for some fourteen years. He stated the petitioner is providing the same community services up the hill with some expansion and more advanced technology than what is currently available to him.

Mr. Josefek noted the petitioner's commitment to New Bedford by purchasing property and generating more taxes. He stated the site is fully served by all utilities, including underground electric. With regard to traffic flow and safety, he stated there are nine employees anticipated throughout the day from 8:00 or 9:00 a.m. to 5:00 p.m. He stated the practice generates approximately four people per hour. He noted they had started site plan review, which has been continued. He stated they will meet all site plan requirements, including a new underground retention area.

Mr. Josefek stated there will be no additional impact on the natural environment and the impervious surfaces should not increase, as they are looking at pervious surface for additional required parking, eliminating any need for a parking variance.

He stated that turning this structure into a house would be less beneficial to the city regarding taxes and burdens on city services. He stated they would be a handicap accessible main entry as well as an elevator.

Mr. Josefek invited questions.

Board Member McTigue confirmed the dental practice will be on the first floor. Mr. Josefek stated the second floor is not currently being looked at, but in the future it may be developed into office space. He stated the two stories fit far better than erecting just a one-story building.

Chairperson Trahan inquired as to the need for two separate lots. Mr. Josefek stated that after discussion with city boards, the garage/barn that was originally to be taken down was instead slated to be kept standing and moved to the other lot. He stated parking from the two structures will be shared.

Chairperson Trahan noted that with two separate lots one could later be sold. Mr. Josefek stated you can legally have shared or joint parking by deed. He stated that not saving the garage/barn is not a problem for the petitioner. It was something that was being done for the city because the historic department wanted to save it. He stated they won't keep it at the expense of the whole project.

Mr. Romanowicz added that you can only have one major building on a lot. That is why they are moving the barn onto a separate lot.

Mr. Josefek referenced the Standard Times Building project he had worked on and the parking accommodations that included use of the parking garage. He stated shared parking is addressed like an easement. He again stated they are happy to let the city have the barn and move it themselves, but were trying to be cooperative.

Chairperson Trahan expressed further concern about the potential for any future sale of the additional lot and its lack of parking. Mr. Josefek again expressed willingness to take the garage/barn out of the mix and have it gotten rid of if the city wants to come and pick it up.

Mr. Romanowicz added that the building is over 75 years old and could be up to a year delay to be moved.

Board Member Decker referenced a note from the city planner regarding the square footage of the improvements not matching in the application and the drawings, which would affect the required parking. Mr. Josefek stated he believed it had been corrected with amended drawings and parking plans. He assured the board there was more than enough parking.

Board Member Decker inquired as to the future additional impervious surface versus green space. Mr. Josefek reiterated the planned changeover to a pervious parking area, stating there is little more than a few percent additional impervious surface anticipated.

Board Member McTigue confirmed the plans before the board were the older version. Mr. Josefek further explained the planned changes to the board, including recharge areas.

Mofta El-ghadi, petitioner, addressed the board, stating that with regard to the barn, the historic commission informed them. He stated he loves the building's aesthetics, but originally intended to tear it down and build a more modern looking office. He stated that he saw the inside as well and then wanted to duplicate the aspects and felt it would look beautiful and fit the area. Mr. El-ghadi stated he has no intention of selling anything, stating the concern was the historical commission's desire to keep the structure, wherein the compromise was to move it over. He again stated he had no intention of selling that lot or anything.

Chairperson Trahan explained her concern to Mr. El-ghadi that if he sold his business, someone else could sell. She noted that the board decision would go onto the property permanently, and someone else may not share his intentions.

Mr. El-ghadi stated he just wanted to make clear that he had no intention of selling anything.

Chairperson Trahan inquired as to the petitioner's willingness to have a conditions of approval that it would be two separate lots, but not sold separately.

Mr. El-ghadi felt he could not answer that question without thinking and talking about it.

Chairperson Trahan expressed that while loving the project, she is concerned that board decisions have been made and then later turned around, either by sale or people not doing what they said they would, against the intentions the board was granting.

Mr. Josefek stated the special permit is only being sought because the MUB requires a dental office to go for a special permit. He stated as a lawyer's office, there would be no need for a special permit. The need arises because of his practice. He stated they could have legal discussion, but were not prepared tonight to address legal what ifs. He stated that as a lifelong resident, there are many things that bother him in the city, but stated they are trying to accomplish something positive.

There was no response to Chairperson Trahan's invitation to speak in opposition.

Upon invitation, Mr. El-ghadi stated his practice has moved from Foster to Hillman and now hopefully back up. He stated one primary reason for this move is the lack of Comcast cable. He stated he has a limited amount of internet capability, and with the advent of technology, such as scanning, more high speed technology is necessary. He stated his current location can no longer account for the need. He stated it makes far more sense to invest in the proposed new location.

Mr. Josefek invited questions.

Chairperson Trahan closed the hearing.

There being no further board questions, an amended motion was made (AD) and seconded (LS) with regard to Case #4268, 899 Pleasant Street, LLC of 32 Hillman Street, relative to property located at 899 Pleasant Street, Assessor's Map 58, Lot 300-302, 304 and 499 in a Mixed Use Business [MUB] zoned district, to approve a special permit to allow the petitioner to erect a dental office as per plans filed, which requires a special permit under Chapter 9, Comprehensive Zoning Sections 2200, 2210, 2230 Appendix A, and 5300-5390, relative to property located 899 Pleasant Street.

Having reviewed this petition in light of the City of New Bedford Code of Ordinances, Chapter 9 Comprehensive Zoning Sections, as cited, the board finds that with respect to those sections the petition is in compliance. In addition to the foregoing sections, this petition has also been found to be in accordance with the City of New Bedford Code of Ordinances, Chapter 9, Sections 5300-5330 and 5360-5390, relative to the granting of special permits, because the board found that the benefit to the city and the neighborhood outweighs the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site.

In consideration of the following sections, the board has found that regarding the social, economic or community needs served by the proposal, the proposal keeps an existing dental practice in operation, continuing to serve community needs. Regarding traffic flow and safety, including parking and loading, the board has found the proposal adequately addressed on-site traffic flow and adds additional parking spaces. Regarding adequacy of utilities and other public services, the board has found the proposal is neutral because existing adequate utilities are in place. Regarding the neighborhood character and social structures, the board has found the proposal fits within the neighborhood's character, inclusive of mixed use business and its development. Regarding the impacts on the natural environment, the board has found that the proposal includes pervious pavement for additional parking, thereby not adding significant impacts. Regarding the potential fiscal impact, including the impact on city services, tax base and employment, the board has found that the proposal adds to the city's tax base without significant increased demand on the city's services.

In light of its review of the specifics noted within this motion, the board finds that the material presented is complete and after its careful consideration of the petitioner's request the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief. Thereby, with the following conditions: that the project be set forth according to the plans submitted, that site plan review with the City of New Bedford Planning Board be achieved, and that the Notice of Decision be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year from the date of decision.

Roll-call vote as follows:

Chairperson Trahan – Yes

Clerk Decker – Yes

Board Member Walsh - Yes

Board Member McTigue – Yes

Board Member Schick – Yes

Motion passes

3. APPROVAL OF MINUTES:

A motion was made (SM) and seconded (JW) to approve meeting minutes dated January 19, 2017, for Case #4261, Case #4262, Case #4254, and Case #4265. Clerk Decker abstaining.

A motion was made (AD) and seconded (LS) to approve meeting minutes of February 16, 2017 for Case #4217, Case #4266 and Case #4267

Motions passed unopposed.

4. ADJOURNMENT:

After a reminder that board members complete their ethics test, the meeting was adjourned at 7:48 p.m..

The next Zoning Board of Appeals Meeting is scheduled for April 27th, 2017